

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
IN AND FOR THE FIFTH APPELLATE DISTRICT

RON MILLER ENTERPRISES INC., dba	)	Court of Appeal No.:F076205
	)	
FRESNO COMMERCIAL LENDERS,	)	
	)	
Plaintiff and Appellant,	)	(Super. Ct.: 15CECG02661)
	)	
v.	)	APPELLANT'S REPLY
	)	TO REQUEST FOR
	)	RECONSIDERATION
LOBEL FINANCIAL CORPORATION,	)	
INC.,	)	
	)	
Defendant and Respondent.	)	
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Appeal From a Statement of Decision  
Of The Superior Court, County of Fresno  
Hon. Donald Black, Judge

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APPELLANT'S REPLY TO MOTION FOR RECONSIDERATION

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RON MILLER ENTERPRISES INC., dba ) No. : F076205  
FRESNO COMMERCIAL LENDERS, )  
) (Sup. Ct. No.)15CECG02661  
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Plaintiff and Appellant, )  
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LOBEL FINANCIAL CORPORATION, )  
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\_\_\_\_\_ )

**APPELLANT’S REPLY TO MOTION FOR RECONSIDERATION**

**I**

**CLAIMED ERRORS**

Respondent, herein after referred to as Lobel, argues there are three errors in this Court’s Appellate Decision, as follows;

- 1.) That the decision does not sufficiently address what happened to Ron Miller’s security interest pursuant to Commercial Code section 9320, after the vehicles were sold.

- 2.) Failing to apply Uniform Commercial Code section 9330 (a) and find that Lobel as a chattel paper purchaser prevailed over the inventory lender, Appellant, so long as Lobel gave new value and bought the goods in good faith and in the ordinary course of business.
- 3.) The third error was analogizing this case to Quartz of Southern California Inc. v. Mullen Bros., Inc. (2007) 151 Cal.App.4th 901. Lobel erroneously claims that case does not apply to the case before the court because, "...*here both parties' rights are governed solely by the Commercial Code.*" (Emphasis added)

## II

### ARGUMENT OF LAW

As the answer to the third argument actually control the first and second arguments, it is the starting point in this response. Quartz of Southern California Inc. v. Mullen Bros., Inc. (2007) 151 Cal.App.4th 901, is factually on point with the current case, and the Respondent's claim that "...*here both parties' rights are governed solely by the Commercial Code.*" Is absolutely incorrect and intentionally ignores the opposite conclusion reached in Quartz when the Appellate Court found on page 908-911 that the Uniform Commercial Code does not apply, as the Vehicle Code section 6300-6303 is the exclusive control of perfecting title

and ownership interests in vehicle, and specifically excludes the application of the Commercial Code. **“The provisions of the Uniform Commercial Code do not come into play to determine the rights of competing parties until the security interest is perfected in under Vehicle Code 6300-6303.” Quartz *supra* 908.**

Appellant has physical possession of the Title Certificates and is the lawful holder of them against the loans it made on each of those vehicles.

Vehicle Code section 6300 provides in part that except for section 5907 no security interest in any vehicle registered under the Vehicle code, irrespective of whether the registration was effected before or after the creation of a security interest, is perfected until the secured party or its successor or assignee has deposited the title with the DMV.

In Morris Plan Co v. Moody (1968) 266 Cal. App. 2d 28,29 the court was dealing with a case on point. Morris Plan, had purchased three Conditional Sales Contracts from an automobile dealership that had failed to pay the original owners for those vehicles, who refused to provide the title certificates to Morris Plan, which then sued to quiet title, arguing that Uniform Commercial Code section 2403 provides a transferor of goods has power to transfer good title to a good faith purchaser for value even if the transferor acquired the goods in exchange for a dishonored check. The Court rejected that argument by explaining the transfer of title to vehicle is

governed by the Vehicle Code 6300, which provides that transfer of the vehicle is not accomplished until endorsed title is deposited with the DMV.

Vehicle Code section 5600 provides that no transfer of any interest in a vehicle registered under the vehicle code shall pass, and any attempted transfer shall not be effective, until the title certificate is surrendered to the DMV to be processed and reissued in the name of the new owner.

Therefore, in the case at bar, the title certificates are required to effect transfer and registration of the vehicles and until that is accomplished the Commercial Code does not apply to govern the rights of the parties.

In Quartz, as in the case at bar, the purchaser of the Conditional Sales Contracts does not merely obtain the right to receive the payments, but is also obligated to provide to the consumer what is owed by those contracts, which includes perfecting registration with the DMV pursuant to Vehicle Code 5600 and 6300.

In Quartz v. Mullen Bros. (*supra*) on p. 911 the court held *“Another reason Mullen should bear the loss of the dealer’s default is because Mullen is the dealer’s assignee, thereby stepping into the dealer’s shoes. To register the vehicles with the Department of Motor Vehicles reflecting the consumers as registered owners, and Mullen as lien holder, which required the acquisition of the certificate of title.”*

Like Mullen Bros. Lobel is obligated to meet the requirements owed by the dealerships that purchased the Conditional Sales Contracts and complete the transfer of ownership pursuant to the Vehicle Code, which clearly means that Lobel is absolutely incorrect when it claims “...*here both parties’ rights are governed solely by the Commercial Code.*”

As a matter of law the Commercial Code is not in play until after Lobel pays Appellant for the titles and deposits them with the DMV, and therefore, Lobel’s claim of error on this point is illogical and desperate.

#### **LOBEL’S SECOND ARGUMENT**

The Second argument of Lobel is that this Court erred by failing to apply Uniform Commercial Code section 9330 (a) and find that Lobel as a chattel paper purchaser prevailed over the inventory lender, Appellant, so long as Lobel gave new value and bought the goods in good faith and in the ordinary course of business.

The first reason why this argument fails is because the Commercial Code does not come into play until after Lobel has complied with Vehicle Code section 6300 et seq, which requires it to pay the appellant as order pursuant to the Appellate Court’s decision, and deposit those documents with the DMV.

The next reason why this argument fails is because Lobel does not qualify as a buyer in the **ordinary course of business.** In

Brasher's Cascade Auto Auction v. Valley Auto Sales & Leasing (2004)

119 Cal.App.4<sup>th</sup> 1038, 1046-1047 the Court found a merchant does not qualify as a buyer in the ordinary course as easily as a consumer. Rather, *“A merchant buyer must observe reasonable commercial standards to obtain the protection of ‘buyer in the ordinary course status.’ ”*

In *Quartz (Supra* at page 910-911) the Court held that failing to require the production of the titles, or verification of their whereabouts, at the time of paying for the Conditional Sales Contracts was not acting in a Commercially Unreasonable Manner, and prevented Mullen from obtaining the status as a buyer in the ordinary course of business, as **“a finance company could easily verify that a dealer had title, or it could ascertain who held the title and how much was owed to obtain it.”** (Emphasis added).

Therefore, Lobel's Second claim of error is unfounded, and provides no basis for disturbing its prior decision.

### **LOBELS' FIRST CLAIM OF ERROR**

That the decision does not sufficiently address what happened to Ron Miller's security interest pursuant to Commercial Code section 9320, after the vehicles were sold.

For the reasons set out above this argument is addressed by pointing out that the Commercial Code did control the issue, and because

as set out in the Quartz decision Appellant was the lawful holder of the titles, and Lobel had stepped into the shoes of the Automobile Dealership and was required to obtain the title certificates and complete the transfer to the buyers, on page 910 in the Quartz decision the Appellate Court relied on Los Angeles Nat Bank v Bank of Canton (1991) 229 Cal. App. 3d 1267-1278, when it explained when dealing with a finance company's purchases of Conditional Sales Contracts from an Automobile Dealers, the finance company is in the last and best position to protect the consumer, itself and the holder of title by simply requiring production of title, or verification of the location of the title prior to paying for the Contracts, and failing to do so it is responsible to pay the holder of title what is owed in exchange for the title so it can comply with Vehicle code 6300.

Therefore, Lobel's First claim of error is unfounded, and provides no basis for disturbing its prior decision.

#### **AMICUS BRIEF**

The Amicus Brief filed by American Financial Services Association adds nothing to the argument of the Respondent, but merely reiterates the incorrect claim that the Commercial Code controls the rights and obligations of the parties, and ignores the control of the Vehicle Code and



the applicable decision of Quartz v. Mullen Bros *supra*. As such, it fails to provide a reason for the disturbance of prior decision of this court.

Dated: April 4, 2019

Respectfully submitted,

/s/D. Mitchell Taylor, Esq.  
D. MITCHELL TAYLOR  
Attorney for Appellant

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.360(b)(1), I certify this brief contains 1,479 words, based on the word-count feature of my word-processing program.

Dated: April 4, 2019

Respectfully submitted,

/s/ D. Mitchell Taylor

D. MITCHELL TAYLOR  
Attorney for Appellant

DECLARATION OF PROOF OF SERVICE

*Re: Ron Miller Enterprises Inc. v. Lobel Financial Corp. No. F076205*

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 24700 Lower Trail, Carmel, California 93923. On April 5, 2019, I served a true copy of the attached:

**APPELLANT’S REPLY TO REQUEST FOR RECONSIDERATION** on each of the following, by placing same in an envelope or envelopes addressed respectively or electronically filed and served as follows:

Electronically Filed on the California Court of Appeal  
Court of Appeal  
Fifth Appellate District  
State of California  
2424 Ventura Street  
Fresno, CA 93721

Electronically Served on Defendant/Respondent  
Lobel Financial Corp. Gary Dean  
Gary Dean Lobel, Esq.  
Ronald J. Green Jr.  
1150 N. Magnolia Avenue  
Anaheim, CA 92801-2605

Fed Ex  
Hon. Donald Black  
Fresno County Superior Court  
1130 “O” Street  
Fresno, CA 93721

Mail to Amicus Attorneys  
Jan T. Chilton, Esq.  
Mark Joseph Kenney, Esq.  
SEVERSON & WERSON  
One Embarcadero Center, 26<sup>th</sup> Floor  
San Francisco, CA 94111

Each said envelope was then sealed and deposited in the United States Post Office depository, under the exclusive custody and care of the U.S. Postal Service within the State of California, or properly addressed wrapper in an Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of California.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on April 5 2019, at Carmel, California.

/s/Marsha Taylor  
Marsha Taylor